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60; while in *Herreshoff v. Bontineau*, 17 R. I. 3, it was held that the state was too extensive for the restraint of a teacher of French; so in *Bingham v. Maigne*, 52 N. Y. Sup. 90, the territory of New York city and 250 miles outside was too extensive a restriction on the manufacture of printers' rollers and composition; also where no limit of space is designated the contract is void. *Curtis v. Gokey*, 5 Hun. 355; *Bishop v. Palmer*, 146 Mass. 469; *Gamewell Fire Alarm Tel. Co. v. Crane*, 160 Mass. 50. In regard to contracts of restraint unlimited as to time, it is said that this restraint, if unnecessary, will invalidate contract. *Carrl v. Snyder*, (N. J. Eq.) 26 Atl. 977; *Swanson v. Kirby*, 98 Ga. 586. So a contract that a physician shall not "at any time thereafter" engage in practice in a certain city is void, as otherwise he might not practice after death of the other party. *Mandeville v. Harmon*, 42 N. J. Eq. 185. The general rule to-day is that a contract in restraint of trade, to be supported, must be restricted as to territory, and the court be able to see that considering the nature of the business in connection with the territorial limits assigned, the limits designated are not unreasonable in extent. *Schwahn v. Holmes*, 49 Cal. 665; *Ellis v. Jones*, 56 Ga. 504; *Empson v. Bissinger*, (Com. Pl.) 9 Wkly Law Bul. 86 (Ohio); *Daly v. Smith*, 38 N. Y. Sup. Ct. 158.

CORPORATION BOND ISSUE—RESTRAINT OF STOCK SUBSCRIPTION.—WALL V. UTAH COPPER CO., 62 ATL. (N. J. EQ.) 533.—Defendant company wishing to develop its property, resorted to an issue of bonds secured by mortgage, each bond "to be convertible at the option of the holder at any time within five (5) years from the date thereof, into fifty (50) shares of the value of ten (10) dollars each of the stock of the company." The bonds were $1000 each and the stock was worth about $23 a share actual market value. The company is a prosperous, growing concern. Complainant is a stockholder and seeks to restrain the issue of the bonds on the ground that the proposed action will deprive him of a clear and indisputable right which he has by law to participate in any issue of *new* stock to an extent measured by the comparative amount of his present holdings of stock and upon the same terms that other parties shall participate therein. Injunction granted.

CORPORATIONS—RIGHTS OF PERSONS ENTITLED TO INCOME FROM SHARES—STOCK DIVIDENDS.—IN RE STEVENS, 95 N. Y. SUPP. 1084.—*Held*, that a stock dividend declared on shares out of "surplus and undivided profits" belonged to the life tenants and not to the remainderman and was properly credited to "income."

This case follows the rule laid down in the leading case of *McSouth v. Hunt*, 154 N. Y. 179, and is well supported. *Smith's Estate*, 140 Pa. St. 344; *Hite's Devisees v. Hite's Ex'r.* 93 Ky. 257; The reason for the rule being that such a dividend is only a form adopted by a corporation of distributing to its shareholders its profits and accretion instead of a money payment. 2 *Thompson, Corporations*, Sec. 2192. But the contrary is held in England and by high authority in this country, such dividend being considered as forming part of the *corpus*. *Minot v. Paine*, 99 Mass. 101, *Gibbons v. Mahon*, 136 U. S. 549. The theory of these decisions is that a stock dividend is "merely a change in the form of ownership of corporate capital and to give the new share certificates to the life tenant would seem to rob the remainderman." 2 *Thompson, Corporations*, Sec. 2192. The

cases are in direct conflict and irreconcilable. The rule as approved in the present case is equitable and just while the latter doctrine seems to be founded upon considerations of mere convenience. *Pritchett v. Nashville Trust Co.*, 96 Tenn. 472.

CRIMINAL LAW—EVIDENCE—INSANITY—OPINIONS OF NON-EXPERTS.—BOYD V. STATE, 88 S. W. 974 (ARK.).—*Held*, that in a prosecution for murder, witnesses who have detailed the acts of defendant may properly state whether they considered him insane or not.

The question of the admissibility of such evidence has been much debated in this country. *Wigmore on Evidence*, Sec. 1993. It has been held in some states that such evidence by a non-expert is inadmissible even though based on his own knowledge of facts. *Com. v. Wilson*, 1 Gray 337; *Real v. People*, 42 N. Y. 270; *O'Brien v. People*, 48 Barb. 275. Other states have decided that the opinion of a witness, not an expert, is competent upon the question of the prisoner's sanity when such opinion is formed on facts within personal knowledge of the witness. *Genty v. State*, N. J. L. 482; *Chaice v. State*, 31 Ga. 424; *Jamison v. People*, 145 Ill. 357. The rule generally accepted by the weight of authority to-day is that a witness, who has had an opportunity of observing defendant may be asked, after stating facts within such observation whether from defendant's general appearance and conversation he was at the time of sound mind. *Wilkinson v. Pearson*, 23 Pa. St. 147; *Grant v. Thompson*, 4 Conn. 403; *Harrison v. Rowsan*, 3 Wash. C. C. 580; *Chaice v. State*, *supra*. But a non-expert witness will not be permitted to give mere opinions, disconnected from the facts on which such opinions are based. *Farrel v. Brenan*, 32 Mo. 328; *Eckert v. Flawry*, 43 Pa. St. 46. The tendency in some states is to confine such non-experts to a mere statement of facts. *Real v. People*, 42 N. Y, 270; *Gewike v. State*, 13 Tex. 568; *Caleb v. State*, 39 Miss. 722. Neither experts nor non-experts can be examined on conclusions of law. *State v. Klinger*, 46 Mo. 224.

EVIDENCE—EXPERT TESTIMONY—HYPOTHETICAL QUESTIONS.—HUMBER V. VILLAGE OF ITHACA, 105 N. W. 9 (MICH.).—*Held*, that a question to a physician, as to certain results being caused by an injury, which permitted him to use knowledge of the injured person's condition not embodied in the question, is unobjectionable if his conclusion is based upon conditions discovered by him and previously fully detailed to the jury.

When the testimony of an expert is based upon personal observation there are three rules applied in different courts. Hypothetical questions are in most courts held to be unnecessary. *State v. Foote*, 58 S. C. 218; *People v. Young*, 151 N. Y. 219; *Van Deusen v. Newcomer*, 40 Mich. 119. Some of these courts hold, however, that all the facts from which the conclusion is drawn must first be put in evidence as was done in this case. *Van Deusen v. Newcomer*, *supra*; *Louisville Etc. R. R. Co. v. Falvey*, 104 Ind. 419. And in rare cases the courts have required an advance hypothetical question. *Hitchcock v. Burgess*, 38 Mich. 507. The fallacy in the second class of cases is well illustrated in *Van Deusen v. Newcomer*, *supra.*, where the reason given for the rule is the alleged impossibility of testing such an opinion by calling other experts. There can be no such practical difficulty since all the facts upon which the opinion is based may be brought out in cross-examination. *Fuller v. The Mayor*, 92 Mich. 201.